IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

Crl.MC.No. 726 of 2007()

CRRP.44/2004 of ADDL. SESSIONS COURT, FAST TRACK COURT NO.-I (ADHOC), MANJERI

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PETITIONER: REVISION PETITIONER (IN CRL.RP 44/04

KARIKKAKUZHIYAN MOHIYUDHIN,
S/O.MOIDEENKUTTY, KARIKUZHIYAN HOUSE,
VALIYAPARAMBU, PULIKKAL.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS: RESPONDENT (IN CRL.R.P. 44/04)

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1. CHOLA ULLATTU RUKHIYA,
D/O.MOIDEEN, ULLATTU HOUSE, MUSLIYAR ANGADI
NEDIYIRUPPU POST.

2. STATE REPRESENTED BY
DISTRICT COLLECTOR MALAPPURAM,
REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTORSRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/03/2007, ALONG WITH CRMC NO. 790 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.Nos. 726 & 790 of 2007

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Dated this the 23rd day of March, 2007

O R D E R

These petitions are filed by the common petitioner under Section 482 Cr.P.C. to invoke the extra ordinary inherent jurisdiction available to this Court to set aside the revised order passed by the learned Sessions Judge in proceedings under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act.

2. Marriage is admitted. That the spouses were living in matrimony for a long period of 21 years is not disputed. The spouses are blessed with one child also, it is submitted. The husband is in his early 50s and the wife is in her mid 40s. The husband was employed abroad. He has purchased properties in his name. Divorce is also admitted. Liability to pay amounts under Section 3 of the Act is not seriously disputed. Virtually the dispute is only regarding the quantum of amount payable.

3. Before the learned Magistrate, the claimant/wife examined herself as PW1 and proved Exts.P1 to P20. The petitioner/husband examined himself as CPW1 and proved Ext.D1. The learned

Magistrate came to the conclusion that an amount of Rs.1,59,000/- is payable under Section 3 of the Act, Rs.3,000/- (3 x 1000) as maintenance during the period of Iddat and Rs.1,56,000/- (100 x 13 x 12 months) as fair and reasonable provision and maintenance for the future.

4. Dissatisfied with the order, both sides went before the learned Sessions Judge. The learned Sessions Judge disposed of the revisions by impugned common order. The learned Sessions Judge accepted the contention of the wife that the monthly quantum (multiplicand) adopted by the learned Magistrate is not correct. The learned Sessions Judge on the evidence available, came to the conclusion that atleast an amount of Rs.2,000/- must have been fixed as multiplicand. The learned Sessions Judge accepted the case of the petitioner that the multiplier 13 adopted by the learned Magistrate to fix the quantum of fair and reasonable provision and maintenance for the future is excessive. The learned Sessions Judge reckoned 10 as the proper multiplier in the facts and circumstances of the case.

5. The learned counsel for the petitioner challenges the enhancement of the multiplicand by the learned Sessions Judge and further contends that the reduction of the multiplier from 13 to 10 was not

sufficient. It must have further reduced atleast to 5. In these circumstances he assails the common impugned order.

6. I must first of all alertly remind myself of the nature, quality and contours of the jurisdiction of this Court while considering the challenge under Section 482 Cr.P.C. That is an extra ordinary inherent jurisdiction. The power under Section 482 Cr.P.C. is wide, sweeping and comprehensive. But the width and amplitude of the power must bring with it the need and necessity to be circumspect. Is there failure/miscarriage of justice? Is there abuse of process of the Court? These are the crucial questions which the court would consider when requested to invoke the jurisdiction under Section 482 Cr.P.C.

7. I cannot afford to ignore the vital and crucial fact that the claimant/wife had lived in matrimony for a period exceeding 21 years. The pink of her youth was spent in the company of the petitioner. At mid 40s her opportunity to secure another marriage, though not impossible, are indeed bleak with a fairly grown up child born in the wedlock. The husband was employed abroad. He claims that he was only a sweeper. But he did not succeed in placing any material before the Court in support of that plea. In these circumstances any Court will look only to the petitioner to afford tangible evidence on that aspect. The evidence further shows that

the petitioner had acquired lot of properties in India. That also affords fair indications about the affluence of the petitioner.

8. Viewed from any angle, I am unable to agree that fixation of Rs.2,000/- as quantum of monthly maintenance and 10 years as multiplier by the learned Sessions Judge to ascertain the quantum of fair and reasonable provision and maintenance cannot be held to be incorrect, improper much less perverse. The fact that this court had in some cases reckoned 5 as the proper multiplier does not and cannot imply that 10 cannot be reckoned as multiplier in another case. There is also absolutely no merit in the complaint that failure/miscarriage of justice results from the impugned order passed by the learned Sessions Judge in revision. The learned Sessions Judge had invoked the powers in revision. But I am unable to agree that the revisional powers have been exceeded by the learned Sessions Judge in modifying the order. The challenge raised in these petitions is without merit.

9. These Crl.M.Cs. are accordingly dismissed.

(R. BASANT)
Judge

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